



New Jersey Department of Children and Families Policy Manual

Manual:	CP&P	Child Protection and Permanency	Effective Date:
Volume:	IV	Out of Home Placement	
Chapter:	A	General Placement	4-5-2010
Subchapter:	11	Home Selection	
Issuance:	100	KLG v. Adoption	

Making the Resource Placement Decision - Adoption and KLG

Purpose

7-14-2008

The purpose of this Manual section is to present policy that supports making a resource placement decision, including adoption or KLG, for a child who cannot be reunited with his or her birth family and is placed by CP&P with a kin caregiver.

Authority

7-14-2008

- N.J.S.A. 3B:12A-1-6, Kinship Legal Guardianship Act
- N.J.S.A. 30:4C-84-89 et seq.
- N.J.S.A. 30:4C-15 (d) and (f), Petition to terminate parental rights, conditions
- N.J.S.A. 30:4C-15.3, Exemptions from requirement to file petition seeking termination of parental rights
- P.L. 272, Adoption Assistance and Child Welfare Act
- P.L. 105-89, Adoption and Safe Families Act

Concurrent Planning and Permanency

7-14-2008

Federal and State law require the Division to implement concurrent planning for all children in out-of-home placement, including children placed with kinship caregivers by the Division.

First Placement - Best Placement Practice Model

7-14-2008

The Division removes a child from his or her parent's care only when the child cannot remain safely at home. The overall goal of the Division is to place each child, as quickly

as possible, with a family willing to make a permanent commitment, preferably adoption, if family reunification efforts fail. Temporary or interim placements for a child should be avoided, as they cause additional emotional trauma. In considering the suitability of kin for placement, the Division assesses his or her willingness and ability to adopt the child.

Making the Resource Placement Match: Assessing the Best Interest of the Child

7-14-2008

- Willing and Able - Pursuant to N.J.S.A. 30:4C-12.1, when CP&P places a child out of home, it is obligated to search for and assess prospective kinship caregivers, to determine if there are any who are both "willing and able" to provide a safe placement for the child:
 - Does the kin meet, or with assistance can he or she meet, licensing standards for a resource home (e.g., physical space, background checks on all adults in the home)?
 - Can the prospective kinship caregiver meet the child's needs and protect the child (e.g., provide food, clothing, shelter, supervision, routine and special medical or mental health care, education)?

If more than one kinship household has been determined to be both "willing and able" to care for the child, a "best interest" decision must be made.

- Best Interest of the child is determined by a comprehensive assessment, which includes a thorough examination of the child's strengths and needs, the suitability of the kinship family to meet those needs, and the family's willingness and ability to make a commitment to the child.

Child's Strengths and Needs

7-14-2008

Assessment of the child's strengths and needs includes, but is not limited to, the following factors:

- Child specific information, such as:
 - Medical, dental, mental health, and educational needs
 - Whether the child is functioning at the appropriate developmental age and, if not, what are the child's special needs
 - Whether the child exhibits behavior dangerous to him or herself or others
 - Whether the child is involved in the juvenile justice system
 - The child's interests and talents

- Sexual orientation and identity
- The child's background, including:
 - Maternal and paternal family history
 - Religious and cultural needs
- The child's connections with:
 - Parents - the level of bonding, concerns about the parents, and the relationship with the parent's paramour or partner, if appropriate
 - Siblings or other relatives - the level of bonding, concerns about residing with siblings or other relatives
 - The school community - relationships with teachers, mentors, and peers, adjustment, grades
 - Other community groups (e.g., the child's church, community center, other activities and organizations) - focusing on relationships

Suitability of Kin to Meet the Child's Needs and Make a Commitment to the Child
9-8-2009

Assessment of the suitability of kin for placement and permanency includes, but is not limited to, the following factors:

- Is the home licensed or can it meet resource family care licensing standards? (No child placed by CP&P can remain in a home that cannot or will not become licensed.)
- Is the kin able to provide a safe environment for the child and to protect the child, especially from the child's parents, if they were abusive? Is the kin committed to the safety protection plan developed for the child and child's parents? If the kin cannot abide by the safety protection plan and protect the child, the placement should not be made under any circumstances.
- Note: A child's parent cannot reside in the home, unless an exception is made by an Area Director. Staff may seek an exception only when the parent is dependent upon the caregiver, because the parent is a minor and keeping the child and parent together is part of the case plan, or the parent is developmentally challenged, and not capable of residing independently. See [CP&P-IV-D-2-200](#), Child's Parent Residing In KLG Caregiver's Home Precludes Eligibility.

- Is the kin willing to make a permanent commitment to adopt the child, if reunification cannot be achieved? Is the kin committed to long term care and stability? Can he or she raise the child to adulthood based on his or her health, stability, age?
- Does the kin have a strong family connection (i.e., What is the strength and level of the family network, including size, level of commitment, and involvement? How close is the kin to other family members, physically and emotionally? Will he or she reinforce an ongoing family connection)?
- Can the kin meet the child's needs or be trained to meet the needs? Is he or she willing to partner with CP&P to provide services?
- Will the kin consider taking in the child's siblings? If not, will the kin support maintaining the sibling relationship? Is the home physically close to the siblings?
- Is the kin's home the least restrictive placement, close to the child's school, community, or county?
- Does the kin require subsidy? Would the child be eligible for an adoption or KLG subsidy?

Adoption is the Preferred Permanency Plan when Reunification Fails 7-14-2008

If reunification efforts are not successful, adoption is the preferred permanent plan. Adoption provides a child with the highest level of legal and emotional security.

Federal and State Laws Require Adoption as the Preferred Permanent Option 7-14-2008

- N.J.S.A. 30:4C-15(d) says the Division may file for termination of parental rights (TPR) when, despite reasonable efforts to strengthen the parental relationship, the parent has failed for a period of one year to remove the circumstances or conditions that led to the removal or placement of the child, although physically and financially able to do so.
- The Federal Adoption and Safe Family Act (ASFA), N.J.S.A. 30:4C-15, and N.J.A.C. 10:133J-2.1, require that TPR be initiated when a child has been in out-of-home placement for 15 of the last 22 months, unless an exception to filing is documented (N.J.S.A. 30:4C-15.3).

KLG Only Considered After Adoption Is Ruled Out 7-14-2008

KLG can only be selected as a permanency goal by the Worker and his or her Supervisor when it is determined that adoption by the kin caregiver is not feasible or likely, and removal from the kin caregiver's care is not in the best interests of the child. The Kinship Legal Guardianship Act, N.J.S.A. 3B:12A-1-6, requires that adoption be ruled out before Kinship Legal Guardianship can be considered as an alternative permanent plan:

- The Act states, "In considering kinship legal guardianship, the State is seeking to add another alternative, permanent placement option, beyond custody, without rising to the level of termination of parental rights, for caregivers in relationships where adoption is neither feasible nor likely." (N.J.S.A. 3B:12A-1)
- Before appointing a kin caregiver as a kinship legal guardian for a child, the Act also requires the court "to consider the Division's actions regarding reunification of the child and his and her family, whether adoption of this child is neither feasible nor likely, and whether kinship legal guardianship is in this child's best interests as a permanent placement." (N.J.S.A. 3B:12A-6d(3))

Adoption Preference Not Altered by Exception to Filing for TPR for Relative Placement

7-14-2008

- Pursuant to N.J.S.A. 30:14C-15.3, CP&P is not required to file a petition for TPR, if CP&P determines that the child is being cared for by a relative and a permanent plan for the child can be achieved without the termination of parental rights.

The decision to file a TPR action rests with the Division, and is not made by the relative or the court. The Division will file for TPR:

- If the relative with whom the child is residing will adopt the child, if the child becomes legally free; or
 - If a plan to move the child from the relative's home to be adopted would be in the child's best interest.
- The New Jersey Supreme Court and Appellate Division have held that:
 - Adoption provides a more permanent alternative for the child than KLG and is the preferred alternative; and
 - In order to award kinship legal guardianship, there must be "clear and convincing proof" that adoption is not feasible or likely and that KLG is in the child's best interests.

Consider Additional Factors When Deciding Whether Adoption or KLG is in the Child's Best Interest

7-14-2008

If the child has been placed with a kin caregiver who will not adopt, even if the child becomes legally free, consider the following factors regarding whether to pursue adoption:

- The reasons why the family is not willing to adopt.
- Recommendations of professionals (e.g., therapists, mental health professionals) whether termination of parental rights would do more harm than good.
- Whether the child's relationship with, and connection to, the kin caregiver outweigh moving the child to a family who will adopt (either another relative home or a non-related home).
- The wishes of an informed child who has the capacity to provide input into decision making. (Take into account that children will frequently say they do not want to be adopted based on a lack of knowledge, guilt, or fear of the unknown.)
- The kin caregiver's willingness to adopt after receiving full disclosure regarding the child's strengths and needs and the advantages and disadvantages of adoption and KLG (see below).

Mandated Full Disclosure

4-5-2010

The Worker is required to meet with the kin in person to have an in-depth discussion about the advantages and disadvantages of adoption and KLG as early as possible prior to, or immediately following, the initial placement of a child in the kin caregiver's home. The purpose of this discussion is to enable the kin to express, as early on as possible, what level of permanent commitment he or she is willing to make to the child.

The Division then considers the level of commitment expressed by the kin as one of the factors in determining the best placement for the child.

The kin acknowledges that full disclosure was provided by signing CP&P Form [4-18](#), Fact Sheet - Differences between Adoption and KLG, Acknowledgement Receipt. A summary of the information provided to the kin is found in the table below:

Mandated Full Disclosure of Differences Between Adoption and KLG

Factors to consider	Adoption	KLG
Legal Status/Control	Adoptive parents assume parental rights and duties; lifelong legal commitment	Order may be vacated and child returned to the parent's custody, or CP&P initiates action

Decision Making	All decisions by adoptive parents	Parent retains certain rights and shares decision making with kinship legal guardian
Longevity of Arrangement	If adoptive parent is sick or dies, he or she can make plans for care of child	KLG cannot be transferred to another relative; care and custody last as long as the KLG caregiver is able to care for the child; if the KLG caregiver dies and KLG ends, the child returns to the parent or CP&P initiates action
Financial Resources	Subsidy follows child; board rate may address special needs; adoptive parent eligible for Federal adoption tax credit (see current IRS guidelines); subsidy available for preschool child care	If KLG stops, subsidy stops; board rate determined by mutual assessment/agreement using the foster care rate assessment chart; no Federal KLG tax credit; no child care provided
Inheritance	Applies	If the child is not in the will, there is no inheritance
Relationship Between Child and Birth Parents	Adoptive parent determines if child has a relationship with the parent	Parental rights are not terminated; parent visits occur unless a court denies visits; the parent can petition to have the child returned
Medical Care for Child when Residing Outside of New Jersey	Medical Coverage: IV-E adoption assistance eligible via resident state; non IV-E adoption assistance eligible via ICAMA (II K 331.3, Medicaid Coverage for IV-E Adoption with Subsidy Children Moving Out of, or Into New Jersey)	The child continues to be eligible for Medicaid
Name change	Child can assume adoptive parent's last name	Child retains name given by parents at birth

Details of this discussion must be thoroughly documented on a contact activity note in NJS.

Tools and Resources Available to Make Informed Decisions 7-14-2008

The following chart identifies tools and resources that are available to assist CP&P Workers in making the resource placement decision and the adoption or KLG decision:

Tools/Resources for Comprehensive Assessments

Tools/Resources	Sources
Pre-Placement Conferences with Family	Family Engagement; sharing parent handbooks such as CP&P Form 18-33 , A Guide for Parents When Your Child is in Foster Care
CP&P Forms 22-24, 22-25, and 26-87	Child's and Parent's/Caregiver's Strengths and Needs Assessments completed in NJS
CP&P Forms 26-81a/b, 26-87, and DCF Form 26-80	Child's maternal and paternal history; other child specific information
Available Evaluations	Educational, medical, and mental health evaluations
Ongoing Enhanced Review Process	5th and 10th month child placement reviews

Dispute Resolution Regarding Placement Decision 7-14-2008

- Unwilling and Unable (Relative Rule-Out) - If CP&P finds a relative to be "unwilling" or "unable" to care for the child, the relative has the right to request a dispositional hearing to enable the child to be placed in his or her home (N.J.S.A. 30:4C-12.1(b) and N.J.A.C. 10:120A-3.1(a)2).
- Best Interest - If a relative, who CP&P finds willing and able to provide care (i.e., CP&P has not ruled out the relative), is not selected by CP&P for the placement of a child based on the child's best interest, the relative does not have administrative appeal rights.

Relevant NJS Forms and Windows 7-14-2008

- CP&P Form [22-24](#), New Jersey CP&P Caregiver Strengths and Needs Assessment
- CP&P Form [22-25](#), New Jersey CP&P Child Strengths and Needs Assessment
- CP&P Form 26-81a/b, Family Summary/Case Plan
- CP&P Form [26-80](#), Court Report
- CP&P Form [26-87](#), Desired Family Outcomes and Specific Activities

- Caregiver Strengths and Needs Assessment Window
- Structured Assessment Window
- Case Plan Window

Other Forms

7-14-2008

- CP&P Form [4-18](#), Fact Sheet - Differences between Adoption and KLG, Acknowledgement Receipt
- CP&P Form [26-89](#), Concurrent Planning Guide
- CP&P Form [26-88](#), Concurrent Planning Flow Chart

Related Policy

7-14-2008

- [CP&P-IX-G-1-100](#) Procedures to Request Adult Probation Records
- [CP&P-III-B-2-200](#) Commitment to Permanency
- [CP&P-III-B-2-100](#), Permanency Planning
- [CP&P-IV-B-2-100](#), Resource Home Selection